

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**C.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Rosenberg, TX, Employer**

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**Docket No. 15-324  
Issued: May 21, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 30, 2014 appellant filed a timely appeal from the July 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant received a \$14,437.93 overpayment of compensation; (2) whether he was entitled to waiver of recovery of the overpayment; and (3) whether OWCP properly set the rate of recovery from continuing compensation.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On September 12, 2000 appellant, a 51-year-old letter carrier, sustained a traumatic injury in the performance of duty when he was involved in a motor vehicle accident. OWCP accepted his claim for multiple cervical and lumbar conditions.

Appellant received compensation for temporary total disability on the daily rolls beginning April 22, 2002. He received compensation on the periodic rolls beginning June 16, 2002. No deductions were made for basic life insurance or postretirement basic life insurance.

On August 30, 2007 appellant completed an SF-2818 Continuation of Life Insurance Coverage as an Annuitant or Compensationeer. He elected basic life insurance in retirement/compensation if eligible with "no reduction."

On March 27, 2014 the Office of Personnel Management (OPM) advised OWCP that appellant, as a compensationeer, was eligible for postretirement basic life insurance coverage with no reduction. OPM noted that the commencement date for postretirement deductions was April 5, 2003, but it appeared that OWCP was not withholding premiums for the "no reduction" election.

OWCP began deducting postretirement basic life insurance premiums from appellant's compensation beginning April 6, 2014.

On June 5, 2014 OWCP issued a preliminary determination that appellant had received a \$14,437.93 overpayment of compensation because life insurance premiums were not collected from April 21, 2002 through April 5, 2014. It showed how it calculated the amount of the overpayment, first by determining the premiums for basic life insurance beginning April 21, 2002, and then by determining the premiums for postretirement basic life insurance with "no reduction" beginning April 5, 2003.

OWCP found that appellant was not at fault in creating the overpayment. It instructed him to complete and submit an overpayment recovery questionnaire detailing his monthly income, expenses, and assets:

"In order for OWCP to consider the question of waiver or to determine a reasonable method for collection, you must complete and submit the enclosed Form OWCP-20. Attach supporting documents to Form OWCP-20, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support the income and expenses listed. Under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days will result in the denial of waiver and no further request for waiver shall be considered until the requested information is furnished."

Appellant submitted an overpayment action request form indicating, with a mark, that he believed the overpayment occurred through no fault of his own. He requested waiver.

In a decision dated July 8, 2014, OWCP finalized its preliminary determination. It found that the circumstances of appellant's case did not warrant waiver of recovery of the overpayment. As appellant did not submit a completed overpayment recovery questionnaire, OWCP found that the record was insufficient to justify waiver of recovery of the overpayment. It determined that recovery of the overpayment should be made by deducting \$282.00 from appellant's continuing compensation payments.

On appeal, appellant notes that the overpayment occurred because of an administrative error that occurred over a 12-year period without his knowledge. He adds that he never received any monetary compensation in regard to the "overpayment." Appellant appeals under 20 C.F.R. § 10.434 relating to waiver. He states that he was given incorrect information in his monthly compensation statements, which stated that his basic and optional life insurance premiums were costing him \$12.00 a month, which was a premium he could afford. Appellant states that he was denied a valuable right to make a sound financial decision to cancel his optional life insurance premium. He explains that he separated under disability retirement on September 18, 2007, yet he was being charged for postretirement premiums beginning April 5, 2003 and basic life insurance from April 21, 2002. Appellant asks for waiver and to be made whole.

### **LEGAL PRECEDENT -- ISSUE 1**

Under the Federal Employees Group Life Insurance (FEGLI) program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>2</sup> The coverage for basic life insurance is effective unless waived,<sup>3</sup> and the premiums for basic and optional life coverage are withheld from the employee's pay.<sup>4</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under "compensation" status. If the compensationner chooses to continue basic and optional life insurance coverage, the schedule of deductions made while the compensationner was an employee will be used to withhold premiums from his compensation payments.<sup>5</sup> When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

It is clear that an overpayment arose in this case. No deductions were made for basic life insurance when appellant began receiving compensation on April 22, 2002. The record shows no election form opting out of coverage. Moreover, on August 30, 2007 appellant elected to continue his basic life insurance coverage into retirement or as a compensationner with "no

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<sup>2</sup> 5 U.S.C. § 8702(a).

<sup>3</sup> *Id.* § 8702(b).

<sup>4</sup> *Id.* § 8707.

<sup>5</sup> *Id.* § 8706(b).

<sup>6</sup> *Id.* § 8707(d); see *James Lloyd Otte*, 48 ECAB 334 (1997).

reduction,” which carried an extra premium. Again, no premiums were withheld until April 6, 2014. Because OWCP failed to withhold premiums for his basic life insurance coverage, appellant received an overpayment of compensation. Appellant argues that he never received any monetary compensation in regard to the overpayment, but his compensation payments were slightly higher than they should have been because no premiums were withheld for the life insurance coverage that he received. The Board will therefore affirm OWCP’s July 8, 2014 decision on the issue of fact of overpayment.

The amount of the overpayment is not clear. Although the record confirms that appellant began receiving wage-loss compensation on April 22, 2002, OWCP calculated the overpayment beginning April 21, 2002. Further, OPM advised that the commencement date for postretirement/compensation deductions with no reduction was April 5, 2003, but it did not explain how this date was selected. Instructions for SF-2818 state that the terms of coverage as applicable at retirement also apply to coverage in effect at the end of 12 months in a nonpay status, whichever comes first. That is the reason appellant is charged for continuation of life insurance coverage in 2003 when he separated under disability retirement in 2007. The election he made was not limited to retirement. It was also effective 12 months after he began receiving compensation.

During his first 12 months in a nonpay status while in receipt of compensation, appellant’s life insurance coverage was still treated as if he were an employee. At the end of 12 months, he would be eligible for life insurance coverage as a compensationers if he met the 5-year/all opportunities requirement (per the election instructions) as of the date he became eligible for compensation. It appears therefore that the extra premium payable for “no reduction” should have begun 12 months after April 22, 2002. The Board is unable to confirm that the date should be April 5, 2003.

Thus, although an overpayment arose when OWCP failed to collect basic life insurance premiums from appellant’s compensation from April 22, 2002 through April 5, 2014, the record does not allow the Board to confirm the amount of the overpayment. The Board will therefore set aside OWCP’s July 8, 2014 decision on the issue of amount of overpayment. The Board will remand the case for further development. OWCP shall issue a preliminary determination clearly explaining how the overpayment was calculated and why certain dates were used. It shall provide appellant another opportunity to complete and submit an overpayment recovery questionnaire. If appellant fails to provide the information requested within 30 days of the request, waiver must be denied pursuant to 20 C.F.R. § 10.438(b). OWCP shall then issue an appropriate final decision on the overpayment.

Appellant notes on appeal that the overpayment occurred because of an administrative error. This does not mean he may keep money that does not belong to him. Even if appellant is not at fault in creating the overpayment, recovery of the debt will still be required unless he meets the criteria for waiver. If he does not provide the information requested in connection with an overpayment recovery questionnaire, waiver must be denied.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation. The case is not in posture, however, on the issue of amount of overpayment. Further development is required.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed on the issue of fact of overpayment and is otherwise set aside. The case is remanded for further action.

Issued: May 21, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board